

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**Re: Petition of Franklin W. Olin College)
 Of Engineering)**

DTE 01-95

PROPOSED FINDINGS OF FACT

Pursuant to the Hearing Officer's request, Wellesley Municipal Light Plant ("WMLP") is providing Proposed Findings of Fact and Conclusions of Law. These Proposed Findings and Conclusions are based on WMLP's Initial Brief which is derived from the record in this case. However, the Proposed Findings of Fact and Conclusions of Law do not and should not be taken as a substitute for WMLP's Initial Brief.

1. On November 9, 2001, Franklin W. Olin College of Engineering ("Olin College") filed Petition with the Department of Telecommunications and Energy ("Department") seeking a declaratory ruling pursuant to 220 CMR 2.08.
2. In its Petition, Olin College requested the Department to authorize Wellesley Municipal Light Department ("WMLP") to provide electric service to the property upon which it is constructing its buildings and facilities.
3. The property on which Olin College is constructing its buildings and facilities is designated as Lot 2. (Olin Petition, 4; Exhs. BE-1-1, Attachment, BE-4-10; BE-7-1; Tr. at 283-285, 286-287, 681). Lot 2 is located in the Town of Needham. (Exh. BE-1-1, Attachment).

Service Territory Findings

4. WMLP has been providing electric power for use on Lot 2 for decades, and specifically on and before July 1, 1997. (Exhs. WMLP-1, pp. 2, 3; BE-8-8; Tr. 678-683).

5. Electricity supplied by WMLP was used to serve the Coleman parking lot, which was on Lot 2. (Exhs. WMLP-1, pp. 2-4; WMLP-2 Attached Exhibit, p. 4; BE-8-8; BE-ARJ-4; OC-1, ¶2; OC-2, pp. 6, 16, 17; Tr. 284, 286, 287, 296, 683, 686-688, 690).
6. Olin College is constructing a building on this very piece of land that the Coleman parking lot previously occupied. (Id.)
7. Electricity supplied by WMLP also was used to serve Map Hill Drive, which was and still is located on Lot 2. (Id.)
8. Olin College is constructing a building on the same land that was and is occupied by Map Hill Drive. (Id.)
9. The record contains substantial and undisputed evidence showing that WMLP serves and has served Lot 2 and parts of Needham. (Id.).
10. NSTAR Gas and Electric Company (“NSTAR”) never has provided electric service to Lot 2 in Needham. (Exhs. WMLP-1, pp. 3-4; WMLP-2-6, 2-10, OC-1, ¶ 2; Tr. at 683).
11. Babson College owned, what is now known as Lot 2, on and after July 1, 1997. (Exh. WMLP-2-7).
12. WMLP has provided electric service to Babson College for nearly 80 years. (Exh. WMLP-1, p. 4).
13. WMLP has served Babson College for nearly 50 years from Babson College’s central switchgear, which is located on Babson College’s property in Wellesley. (Exh. WMLP-1, p. 3; Exh. BE-8-8).
14. Babson College took electric power from WMLP from its central switchgear and distributed it over its distribution facilities to service its buildings and facilities in Wellesley and Needham, including the property designated as Lot 2. (Exh. WMLP-1, pp. 3, 4; Exh. BE-8-8).
15. On March 7, 2000, Babson College sold Lot 2 to Olin College. (Exh. BE-1-4, Attachment).
16. Babson College sold Lot 2 to Olin College as part of their collaborative arrangement regarding the construction of educational buildings and facilities. (Id.).
17. NSTAR did not present any contracts or other documents that show that NSTAR has an exclusive service territory in Needham. (Tr. at 547-569).
18. NSTAR provided a contract dated in 1903 between the Town of Needham and the Greendale Chemical and Electric Lighting Company for a term of five years for service to streetlights and public buildings. (Exh. BE-JJN-1, pp. 15-16; Tr. at 547, 550-552).

19. NSTAR provided a contract, dated February 20, 1908, between the Town of Needham and Edison Electric Illuminating Company pertaining to services only for the Town Hall and the library. (Tr. at 552).
20. NSTAR provided a contract dated February 20, 1908, that only conveyed certain poles used for lighting the Town Square to the Edison Electric Illuminating Company. (Tr. at 561-62).
21. NSTAR also provided a contract dated February 25, 1908, which only allowed Edison Electric Illuminating Company to provide lighting for public places and streetlighting. (Tr. at 565-569).
22. The Department finds that these agreements do not grant NSTAR an exclusive franchise to serve the entire Town of Needham. (Tr. 543-569; Exh. BE-JJN-1).
23. The record contains substantial evidence that WMLP served parts of Needham.
24. In Wellesley Board of Public Works, D.P.U. 86-45/D.P.U. 86-144 (1987), the Department found that WMLP historically served the Cartwright Road area in Needham and that WMLP had a franchise obligation to serve the customers on Cartwright Road in Needham.
25. In determining that WMLP had a franchise obligation to serve Cartwright Road in Needham, the Department recognized that NSTAR does not have an exclusive franchise in Needham.
26. Given the WBPW decision, wherein the Department required WMLP to meet its franchise obligation to serve the Cartwright Road customers in Needham in a non-discriminatory manner, NSTAR's picking and choosing among certain border customers in Needham, and making different decisions in wanting to service some (Olin College) versus not serving others (MWRA, Cartwright Road) shows that NSTAR does not have an exclusive franchise in Needham. (Tr. at 601, 609; Exh. BE-JJN-2, pp. 2-7).
27. The Department finds that NSTAR does not have an exclusive service territory in Needham.
28. The Department finds that WMLP was the actual and historical provider of electricity to Lot 2 and Lot 2 was served by WMLP on and before July 1, 1997.
29. The Department finds that Lot 2 is in WMLP's service territory.

WMLP is of the opinion that the above facts unequivocally show that Lot 2 is in WMLP's service territory and that the Department does not need to go any further to grant Olin's Petition to have the WMLP provide electric service to Olin's buildings and facilities on Lot 2. However, WMLP has offered further Proposed Findings of Fact and Conclusions of Law as an aid to the Department.

No Creative Conveyancing Exists

30. The Department finds that Olin College did not engage in any “creative conveyancing” to obtain service from WMLP because Lot 2 already was in WMLP’s service territory. (Exh. OC-2, pp. 2-3, 8-9; WMLP-1, pp. 7, 8; Tr. at 801-804).
31. The Department finds that Olin College is not constructing its buildings on Lot 2 to avoid taking service from NSTAR. (Id.).
32. Further, WMLP would provide service to Olin College in the same manner that WMLP has served Babson College for the past 50 years. (Exh. WMLP-1, pp. 7,8; WMLP-7, pp. 3, 4; Exh. BE-4-5; Exh. BE-4-6).
33. WMLP would provide service to Olin College from a central switchgear configuration on Babson College’s property in Wellesley. (Id., see also, Exh. OC-2, pp. 2-3, 8-9, 18).
34. Olin College would not be taking electric power from WMLP at a 1,000 square foot parcel that it acquired from Babson College. (Id., see also, Tr. at 801, 803-806).
35. The delivery point from the central switchgear configuration on Babson College’s property would provide the greatest benefit to Olin College in relation to any other delivery point addressed in the record. (Exh. WMLP-1, pp. 7, 8; Exh. WMLP-7, pp. 3, 4; Exh. OC-2, pp. 8, 9, 18)
36. Olin College would own switchgear next to Babson College’s switchgear and the distribution lines from its switchgear and would possess the necessary land rights for such switchgear and lines. (Exh. OC-2, pp. 8, 9, 18).
37. Olin College would take electricity from WMLP at its switchgear in Wellesley and distribute the electricity over its lines without crossing any public ways. (Id.)
38. The delivery point at the central switchgear provides Olin College with the benefit of being able to share the maintenance with Babson College. (Exh. WMLP-1, pp. 7, 8).
39. Olin College and Babson College entered into a Joint Collaborative Agreement to develop joint educational, research, and administrative programs. (Exhs. BE-1-8; OC-2, pp. 2-3).
40. Under the Joint Collaborative Agreement, Babson College is responsible for the maintenance and operations of the electrical infrastructure. (Exh. WMLP-1, at p.7).
41. The Department finds that Olin College and Babson College did not enter into their Joint Collaborative Agreement to avoid taking service from NSTAR. (Tr. at 803-04)

42. Olin College also will realize other economic and reliability benefits from this switchgear location because the infrastructure already is in place, there is the capability of being served by two separate substations, and the primary supply is a dedicated underground cable supply. (Exh. WMLP-1, pp. 7-8)
43. The Department finds that Olin College did not engage in any “creative conveyancing” for the purposes of avoiding taking service from NSTAR.

Customer Choice

44. Olin College wants to receive electric service from WMLP for its buildings and facilities on Lot 2. (Olin Petition, especially ¶4; Exhs. OC-1, OC-2).
45. Olin College has experienced problems with reliable service from NSTAR with regard to NSTAR’s service to Olin College along Great Plain Avenue. (Exh. OC-1, pp. 3, 4).
46. NSTAR presented five service options to Olin College and under each of these options, service will be provided from BECo Substation 148. (Exhs. OC-1, pp. 3-4, BE-ARJ-1, pp. 2-3).
47. BECo Substation 148 has experienced voltage problems. (Exh. WMLP-1, pp. 8-9). For instance, over the past few summers, the voltage was so low that Wellesley College relays tripped, automatically shutting down its cogeneration facilities. (Id.).
48. WMLP has informed NSTAR of the voltage problems with BECO Substation 148. (Exhs. WMLP-3-6).
49. NSTAR has been aware of the voltage problems with Substation 148 since at least 1998. (Id.).
50. The voltage problems arising from Station 148 have not yet been corrected. (Exh. BE-ARJ-1).
51. WMLP would provide underground dedicated service to Olin College. (Exh. WMLP-1, pp. 7, 8; Exh. WMLP-7, pp. 3, 4).
52. This underground dedicated service is used to serve Babson College. (Id.)
53. WMLP has not experienced any outages in the past seven years in serving Babson College. (Exh. WMLP-1, p. 8; Exh. BE-2-22; BE-8-11).
54. The service from WMLP would be connected to NSTAR Substation 292 and not to Substation 148. (Exh. WMLP-1, p. 9; Exh. BE-8-9).
55. Substation 292 has an automatic throwover system scheme while Substation 148 does not. (Id.)

56. The Department finds that Olin College would realize reliability benefits from taking service from WMLP.
57. WMLP's service to Olin College would have a capacity of 9.5 MW. (Tr. 328-329, 334-336; Exh. WMLP-7, pp. 3, 4).
58. The combined loads of Babson and Olin are estimated to reach 7.5 MW.
59. The combined load is comprised of approximately 4.5 MW from Babson College and 3 MW from Olin College. (Id.).
60. Olin College is expected to reach its 3 MW load in approximately eight years. (Id.).
61. Babson College also has agreed to purchase and design new switchgear, so if necessary, another WMLP line could be brought in to serve Babson College. (Id.).
62. NSTAR estimated the construction costs for its five options to serve Olin College to range from \$612,000 to \$1,600,000. (Exh. BE-ARJ-1, pp. 10-13).
63. According to NSTAR's estimate, the cost of the underground option to serve Olin College is \$1,600,000. (Exh. BE-ARJ-1, pp. 10-13).
64. WMLP's estimated cost of its underground build is \$18,000. (Exh. WMLP-2, p. 3).
65. WMLP's construction costs to Olin College for underground service is much less than NSTAR's. (Id.).
66. WMLP's construction costs to connect Olin College is much less than any of NSTAR's costs to connect Olin College under any of the service options NSTAR presented to Olin College. (Id.).
67. According to Olin College, as an engineering college, it requires reliable service; underground service is necessary for reliability purposes.
68. NSTAR's connection to the Olin campus would be at a greater distance from the buildings it is constructing on Lot 2 than WMLP's connection. (Exh. OC-1, ¶2; Exh. OC-2, pp. 6, 9, 10).
69. Olin College's cost of its on-campus build from an NSTAR connection is \$600,000. (Id.).
70. Olin College's cost of its on-campus build from a WMLP connection is \$460,000. (Id.).
71. Olin College's cost of its on-campus build would be \$140,000 less if it interconnects to WMLP's service than to NSTAR's. (Id.).

72. For underground service, the total interconnection costs to Olin College from connecting to NSTAR is \$1,722,000 higher than Olin College's costs to interconnect to WMLP. (Id.).
73. Even with a full revenue credit of \$600,000 from NSTAR to Olin College, WMLP's interconnection costs to Olin College would be \$1,122,000 less than NSTAR's construction cost charge to Olin College for underground service. (Id. and Exh. OC-1, pp. 3-4).
74. The \$600,000 revenue credit is based on Olin College having a full load. Olin College expects that it will have about only half of the full load in the first year and thus, the revenue credit would be less than \$600,000. (Exh. OC-2, p. 12).
75. WMLP's rate under its Large General Service – Primary rate tariff, under which Olin College would take service, is 35% less than NSTAR's rate to Olin College under its G-3 tariff. (Exh. BE-4-8).
76. WMLP's tariff rate includes line losses. (Exh. BE-4-8).
77. WMLP's Large General Service – Primary rate is about 7.0 cents per kWh. (Exh. WMLP-2, p. 5).
78. WMLP's rate is projected to be about 6.5 cents per kWh in the latter third of 2002. (Exh. WMLP-2, p. 5).
79. Using Babson College's load as a proxy, Olin College's costs from NSTAR would have been \$2,955,064 and its costs from WMLP would have been \$1,846,942 for 2001. Olin College's annual savings would be \$1.1 million if WMLP had supplied the electricity. (Exhs. BE-4-8; BE-1-8, OC Supplemental Response).
80. The Department finds that Olin College would realize significant economic and reliability benefits if it takes service from WMLP. (Id.).

PROPOSED CONCLUSIONS OF LAW

1. The Department concludes that the property for which Olin College seeks electric service (Lot 2) is within WMLP's exclusive service territory.
2. NSTAR has failed to establish that it has an exclusive service territory in Needham. The record contains four 100-year old agreements, none of which grants to NSTAR an exclusive franchise in Needham. NSTAR's exclusive franchise claim also is rebutted by the Department's decision in Wellesley Municipal Light Plant, *supra*, in which the Department previously determined that WMLP had an obligation to provide service to customers on Cartwright Road in Needham. This

Department Order is inconsistent with NSTAR's claim that it has an exclusive franchise in Needham.

3. G.L. c. 164, § 1B(a) requires the Department to "define service territories for each distribution company by March 1, 1998 based on the service territories actually served on July 1, 1997 and following to the extent possible municipal boundaries." Pursuant to G.L. c. 164, § 1B(a) and Peabody Municipal Light Plant ("Peabody"), D.T.E. 98-122 (2002), service territories are not established by strictly following municipal boundaries. There is no reason for the Department to depart from its precedent in the Peabody case here.
4. The Department concludes that WMLP meets the criteria established by G.L. c. 164, § 1B(a) as the only utility that has provided electric service to the property. On July 1, 1997, Lot 2 was owned by WMLP's customer, Babson College and at that time, WMLP provided electric service to Lot 2, as it had done for the past 30 or 40 years. In contrast, NSTAR never has provided electric service to that property. Because on July 1, 1997, WMLP was the actual service provider to Lot 2 and Lot 2 was part of a larger parcel of land that straddled the Wellesley/Needham border on that date, following the municipal boundary to define the service territory is neither required nor practical. There is no evidence of any creative conveyancing, which would require a different result.
5. Although the Department concludes that WMLP has a statutory right to serve Olin College, the Department also notes that even if WMLP did not meet the criteria of G.L. c. 164, § 1B(a), Olin College could choose WMLP as its electric supplier under the Department's precedents in Peabody and Ecological Fibers.
6. Had WMLP not provided service to Lot 2, Olin College would be considered a border customer because on July 1, 1997, Lot 2 was part of the Babson College campus, which straddled the Wellesley/Needham border. In addition, Lot 2 abuts Babson College's facilities in Needham. Babson College is WMLP's customer and has been for the past 80 years. Babson College plans to jointly construct buildings with Olin College in both Wellesley and Needham. Thus, as a border customer, Olin College and Babson College would not be required to accept service from NSTAR. NSTAR itself serves border customers, such as Suffolk Downs in Revere.
7. Based on the record as a whole, the mandate of G.L. c. 164, § 1B(a) and the principles established in Peabody, supra, the Department concludes that the "facts and fairness" warrant WMLP as the service provider to Lot 2.